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Special-Education Law in Mexico and the United States

By Charles J. Russo, J.D., Ed.D., and Ricardo Lozano, Ph.D.

Mexico and the United States both strive to provide a quality education for special-needs students.

The challenges of meeting the requirements of students with special needs under the Individuals with Disabilities Education Act and other laws are a particularly timely topic, as large numbers of native Spanish-speaking students move into the United States.

Against that backdrop, this article reviews the laws for special education in Mexico and the United States. The focus on the laws in Mexico stems from the fact that many students cross the border daily to attend public schools in the United States, and because Mexico has many laws in place dealing with special education. We offer school district leaders a comparative overview of the laws in our two countries, so they can be better prepared to meet the needs of the students they serve.

National Education Laws in Mexico

Five major laws in Mexico affect the rights of students with disabilities.

General Law of Education (2014). Article 39 of the General Law of Education declares that the Mexican national education system comprises general, special, and adult education. Article 41 authorizes the integration of young learners with special educational needs into mainstream classes through the application of necessary methods, techniques, and materials. If integration is infeasible, the law calls for the implementation of alternative programs. Article 41 also stipulates that special-education services must include the orientation of parents or guardians, educators, and special-education personnel involved in the process of integrating special-education pupils into mainstream society.

Article 3 of the law addresses equity in education. Article 33 mandates the

establishment of independent special-education centers to facilitate the inclusion of students with disabilities into the national education system.

Law of the National Institute for the Evaluation of Education (2013). According to Article 27 of the law of the National Institute for the Evaluation of Education, the institute is responsible for designing and implementing evaluations contributing to the quality of learning, giving special importance to regional groups and cultural and linguistic minorities, as well as to individuals with disabilities.

General Law for the Inclusion of Individuals with Disabilities (GLIID) (2012). Chapter III of the GLIID focuses on the education of students with special needs by calling for the participation of the following institutions in supporting their diverse needs: the Office of the Federal Services for the Support of Education; the National Institute for the Educational Physical Infrastructure; the National System of Formation, Actualization, and Training of Primary Education Teachers; the National Technical Counsel in Education; the Program for the Strengthening of Special Education and Educational Integration; the National Commission of Free Textbooks; the National Council for Science and Technology; and the National Libraries System.

General Law for the Protection of the Rights of Girls, Boys, and Adolescents (GLPRGBA) (2000). Chapter 9 of the GLPRGBA addresses the rights of children and adolescent students with disabilities. Article 31 describes the responsibility of the federal and local governments to provide parents and families of eligible students with the necessary educational support to achieve respectable lives through appropriate development. The law also makes the federal

and local governments responsible for providing education centers and special-education projects that allow children to be integrated, according to their abilities, into available education systems. Under the GLPRGBA, students with disabilities have the right to free early education programs, health services, rehabilitation programs, play time, and vocational training. If those services and centers are unavailable, the federal and local governments are responsible for their creation.

Article 32 of the GLPRGBA establishes the rights of children and adolescents to educational services appropriate to their age, maturity, and circumstances. That article also addresses the rights of students with exceptional abilities, providing the right to an education on the basis of their intellectual abilities.

General Law of the Provision of Services for the Attention, Care, and Integral Child Development (2011). Article 11 of the law addresses the rights of students to receive an appropriate education. Article 19 promotes access by children who are disadvantaged or disabled to all services established by the law.

Operation of Special Education in Mexico

To enhance the delivery of special-education services, the Mexican National Public Education Secretariat developed two systems: support service units for regular schools and multiple attention centers.

Support service units for regular schools. Support service units are designed to provide adaptations to curricula on the basis of the context and characteristics of the communities in which the schools are located. Units must be located in schools and are designed to provide human, technical, methodological, and conceptual support focusing on inclusive classes, and eliminating or at least minimizing barriers to learning.

Multiple attention centers. Multiple attention centers focus on

students who have a harder time being integrated into regular classrooms. The centers focus on children with visual, auditory, physical, and mental disabilities and provide specialized resources that are unavailable in regular schools. In addition to offering primary, middle, and high school levels of education, the centers provide vocational education for students ages 15–22 who have higher levels of physical or mental disabilities. The centers also support families of the students as well as their own personnel through workshops and conferences offered on site (Mexican Secretariat of Public Education 2014).

Special Education in the United States

The law of special education in the United States is governed by three major federal statutes: the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. In addition, all states have laws in place addressing the needs of students with disabilities. The federal government took the lead in special education rather than in general education, because states failed to meet the needs of students with disabilities.

IDEA. Under the IDEA, first enacted in 1975 as the Education for All Handicapped Children Act, students with disabilities must meet several requirements to qualify for services. They must be between the ages of 3 and 21, must have a disability that adversely affects their education performance, and must need special-education services to receive an appropriate education in the least restrictive environment. The qualifying disabilities are mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as

“emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, and other health impairments, or specific learning disabilities.

Section 504. Section 504 of the Rehabilitation Act of 1973 stipulates that “no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving [f]ederal financial assistance . . .” (29 U.S.C.A. § 794[a]).

Accordingly, school boards must make reasonable accommodations for students who are otherwise qualified, a term that is loosely defined and covers all children of school age, as well as employees, parents, and visitors.

In a major departure from the IDEA’s zero-reject approach, school officials can rely on Section 504’s three defenses to avoid being charged with noncompliance if they do not provide accommodations. Boards can raise defenses (a) if the cost of making an accommodation is too great, (b) if changes significantly alter the nature of programs, or (c) if the presence of students with impairments, rather than disabilities, presents health or safety risks to themselves or others in school programs or activities.

Americans with Disabilities Act. The Americans with Disabilities Act (ADA) extends protections similar to those available under Section 504 to individuals in the private sector. In fact, the ADA’s provisions affecting education are virtually identical to those of Section 504.

Inclusive Education in Mexico

In 2013, the Mexican government initiated the General Guidelines for Special Education Services within the Framework of Inclusive Education established with the purpose of

guaranteeing educational equity and the betterment of the existing special-education processes and results. In a manner similar to the IDEA's Part B regulations, the guidelines promote the regulation of special education and the alignment of the different agents that contribute to that process. The guidelines focus mainly on the diagnosis of students with disabilities, the planning necessary for their academic success, and the evaluation of their progress and readiness to proceed to more advanced levels of education.

Diagnosis. During the first month of the school year, teachers in Mexico are expected to produce group profiles through initial tests and procedures to help broadly identify what students might need to know in order to adapt to group contexts. Teachers also determine whether students may need external intervention. Support groups subsequently test students from psychopedagogic perspectives to gather evidence to justify interventions from support service units or multiple attention centers. Teachers and parents or guardians receive reports detailing tests results.

Academic planning. Teachers in Mexico must create frameworks of reference conducive to the inclusion of all students in the learning process on the basis of the curricula provided for their educational levels. If necessary, support personnel must provide weekly lesson plans to offer assistance for students in need of reinforcement.

Evaluation. Teachers and support teams must evaluate student progress in order to define the specific steps necessary to follow in their development (Mexican Department of Special Education 2013). However, there are no detailed time frames as there are in the IDEA.

United States: Assessment, Placements, and IEPs

The special-education process in the United States is significantly

more detailed and extensive than in Mexico. The IDEA obligates district to complete evaluations of students suspected of having disabilities within 60 days of receiving informed parental consent or within the time frames set by states if jurisdictions create their own rules. Individualized education program (IEP) meetings must occur within 30 calendar days of determinations that children require special education. Districts are required to take steps to ensure that the at least one of a student's parents participate in IEP meetings.

It is important to note that the IDEA identifies full inclusion as a goal rather than a mandate. In making placements, IEP teams have a continuum of options available from least to most restrictive. The first four options, which are typically in the neighborhood schools that children would have attended, are (a) full inclusion in regular classes; (b) inclusion in regular classes with help, such as a teacher's aide; (c) partial inclusion with an aide plus some time in resource rooms; and (d) self-contained placements in resource rooms. The three more restrictive options are special day schools, hospital or home-bound instruction, and residential placements.

Funding for Special Education

In Mexico, 67% of the cost of special education is covered by federal funds; the states provide the remaining 33%. In 2012, the national special-education budget was reduced by 3.35%. The following year, the Federal Official Gazette published the Special Education and Educational Integration Strengthening Plan, the object of which was to strengthen special-education services in every state. Under the plan, funding is to be provided for academic activities, teacher training programs, support for educators, social participation, and operational costs. The amount provided to meet those

objectives is 87,320 million Mexican pesos (roughly \$6.4 million, according to the Federal Institute for the Access to Information and Data Protection (2014).

In the United States, the IDEA has never come close to meeting the target of funding 40% of the national average of per-pupil spending. Even so, in the IDEA, Congress increased the authorized levels for funding the excess costs associated with educating students with disabilities by about \$2.3 billion each year. Insofar as federal funds to implement the IDEA have been inadequate, educators in Massachusetts (*City of Worcester v. the Governor* 1994), New Hampshire (*Nashua School District v. State* 1995), and Washington (*School Districts' Alliance for Adequate Funding of Special Education. v. State* 2010) unsuccessfully challenged the law as an unfunded federal mandate.

Conclusion

Mexico has made progress with regard to enacting laws devoted to special education, but its system is still challenged by inadequate program implementation and evaluation in most states. More specifically, Mexico lacks the proper implementation of identification, placement, and assessment procedures, as well as the necessary regulations about due process and dispute resolution—key features of the IDEA.

On the other hand, the IDEA generally functions well, even as it continues to generate a significant amount of litigation filed by parents who challenge school board actions with regard to their children's placements. In a common area in need of improvement, the IDEA, like similar legislation in Mexico, ought to provide additional support to states to pass on to local school boards. Still, special-education laws in Mexico and the United States demonstrate that educators and lawmakers can make progress in meeting the needs of students with disabilities if they

work together with parents for the benefit of children.

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